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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/418,870	04/07/95	VAN NEST	G 0085.006

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EXAMINER

WORTMAN, D

ART UNIT

1643

PAPER NUMBER

55

DATE MAILED:

08/10/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/418,870

Applicant(s)
Van Nest et al.

Examiner
Donna C. Wortman, Ph.D.

Group Art Unit
1643



☒ Responsive to communication(s) filed on Jun 18, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5, 7-9, 29, 36, 38, and 39 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5, 7-9, 29, 36, 38, and 39 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1643

Since this application is eligible for the transitional procedure of 37 CFR 1.129(a), and the fee set forth in 37 CFR 1.17(r) has been timely paid, the finality of the previous Office action is hereby withdrawn pursuant to 37 CFR 1.129(a). Applicant's first submission after final filed on 6/18/99 has been entered.

Claim 1 was amended, claims 6 and 37 were cancelled, and new claims 38 and 39 were added in Paper No. 54 filed 6/15/99. Consequently, claims 1-5, 7-9, 29, 36, 38 and 39 are pending and under examination at this time.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-9, 29, 36, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodard et al. in view of Silvestri et al., essentially for reasons of record in rejecting claims 1-9, 29 and 36 in Paper No. 45, mailed 5/27/98. While neither Woodard nor Silvestri disclose an adjuvant composition consisting essentially of the exact range amounts of metabolizable oil and emulsifying agent in an oil-in-water emulsion as now claimed, the determination of the amount of metabolizable oil and emulsifying agent to use in an adjuvant is a matter of routine optimization obvious to one of ordinary skill in the art in order to make a stable, effective adjuvant composition with

Art Unit: 1643

submicron oil droplets in an oil-in-water emulsion, as taught by Woodard and Silvestri.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Wortman whose telephone number is (703) 308-1032. The examiner can normally be reached on Monday through Thursday from 8:00 am to 5:30 pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Eisenschenk can be reached at (703) 308-0452. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Donna Wortman, Art Unit 1643 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1643 FAX telephone number is (703) 305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday, or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.



Donna C. Wortman, Ph.D.
Primary Examiner

August 9, 1999